

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHERYL JONES,)
Plaintiff(s),) No. C 09-2880 BZ
v.) ORDER DENYING DEFENDANTS'
BARRY WILLIAMS, et al.,) MOTION TO DISMISS FOR LACK
Defendant(s).) OF PERSONAL JURISDICTION

This case presents a question of first impression in an area of law that remains somewhat unsettled: does a defendant's continuous provision of medical care across state borders over the telephone subject the defendant to jurisdiction in the patient's home state? See generally Dave R. Bonelli, Annotation, In Personam Jurisdiction, Under Long-Arm Statute, Over Nonresident Physician, Dentist, or Hospital in Medical Malpractice Action, 25 A.L.R. 4th 706 (1983).

Plaintiff has sued defendants Williams and Ritzman, both citizens of New Mexico, for medical malpractice and related

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1 claims.¹ Plaintiff was a resident of Hawaii in 2000 when she
 2 met Williams, a licensed therapist, in New Mexico and began
 3 receiving therapy and counseling from him. Plaintiff moved to
 4 California in 2002 and last year returned to Hawaii. Between
 5 2000 and 2006, Williams provided weekly telephonic
 6 psychotherapy and dream counseling to plaintiff from his home
 7 in Taos, New Mexico. On several occasions, Williams traveled
 8 to California, at plaintiff's request, and provided treatment
 9 to plaintiff and others at plaintiff's California residence.²
 10 Between April 2005 and June 2006, Ritzman, Williams's wife,
 11 provided weekly Shamanic counseling to plaintiff over the
 12 telephone. Defendants have moved to dismiss the complaint for
 13 lack of personal jurisdiction or in the alternative to transfer
 14 venue.

15 The parties agree that California's long arm statute,
 16 California Code of Civil Procedure § 410.10, allows the
 17 exercise of personal jurisdiction on any basis consistent with
 18 the federal constitution. To demonstrate that California has
 19 personal jurisdiction over Williams and Ritzman, plaintiff need
 20 only make a *prima facie* showing. See Caruth v. Int'l
21 Psychoanalytical Ass'n, 59 F.3d 126, 128 (9th Cir. 1995). The

22 ¹ All parties have consented to my jurisdiction
 23 pursuant to 28 U.S.C § 636(c) for all proceedings, including
 24 entry of final judgment.

25 ² Although Williams alleges that plaintiff's foundation
 26 invited him to California, I must construe this conflict in
 27 plaintiff's favor. In ruling on a motion to dismiss for lack
 28 of jurisdiction, "uncontroverted allegations in [the] complaint
 must be taken as true, and conflicts between the facts
 contained in the parties' affidavits must be resolved in
 [plaintiff's] favor." Rio Props., Inc. v. Rio Int'l Interlink,
 284 F.3d 1007, 1019 (9th Cir. 2002).

1 exercise of personal jurisdiction over a nonresident defendant
 2 by a forum state is not inconsistent with due process if the
 3 nonresident defendant has certain "minimum contacts" with the
 4 forum "such that the maintenance of the suit does not offend
 5 'traditional notions of fair play and substantial justice.'"
 6 Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) quoting
 7 Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

8 Courts may exercise either general or specific
 9 jurisdiction over a nonresident defendant. Helicopteros
 10 Nacionales de Columbia S.S. v. Hall, 466 U.S. 408, 414 nn. 8-9
 11 (1984). Plaintiff contends that this court has general and
 12 specific jurisdiction over both defendants.

13 **1. Plaintiff has Failed to Establish General Jurisdiction.**

14 General jurisdiction applies where a defendant's
 15 activities in the state are "substantial" or "continuous and
 16 systematic," even if the cause of action is unrelated to those
 17 activities. Data Disc, Inc. v. Systems Tech. Assoc., 557 F.2d
 18 1280, 1287 (9th Cir. 1977). Where general jurisdiction is
 19 inappropriate, a court may still exercise specific jurisdiction
 20 if the defendant has sufficient minimum contacts with the forum
 21 state in relation to the plaintiff's cause of action. Id. In
 22 Bancroft & Masters, Inc. v. Augusta Nat. Inc., 223 F.3d 1082,
 23 1086 (9th Cir. 2000) the court stated the standard is "fairly
 24 high and requires that the defendant's contacts be of the sort
 25 that approximate physical presence."³ (Internal citations

26
 27 ³ The factors to consider for general jurisdiction
 28 include "whether the defendant makes sales, solicits or engages
 in business in the state, serves the state's markets,
 designates an agent for service of process, holds a license, or

1 omitted).

2 Williams's contacts with the state of California are not
 3 sufficient for general jurisdiction. Williams provided weekly
 4 telephonic counseling sessions to plaintiff between 2000 and
 5 2006. He traveled to California three times at plaintiff's
 6 invitation to counsel her and other California residents. For
 7 eleven to fifteen days between 2000 and 2006 Williams was a
 8 professor in residence at the Pacifica Graduate Institute in
 9 Carpinteria, California.⁴

10 These contacts are plainly insufficient to "approximate
 11 physical presence." Bancroft, 223 F.3d at 1086. Aside from a
 12 handful of seminars and his teaching position, Williams
 13 conducted no business in the state of California during the
 14 relevant time period. Williams is not licensed nor does he
 15 hold himself out to be a licensed California physician.
 16 Plaintiff does not allege that Williams regularly conducts
 17 business in California, that he serves the state's markets, or
 18 that he has an agent for service of process in the state.

19 Most of the contact with California took place over the
 20 phone. Plaintiff has cited no authority for the proposition
 21 that phone calls can give rise to general jurisdiction. By
 22 their very nature, phone calls do not approximate physical
 23 presence.

24 Ritzman's contacts with California are even more
 25 attenuated than Williams's. Between 2000 and 2006 she only

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 27 is incorporated there." Bancroft, 223 F.3d at 1086.

28 ⁴ None of plaintiff's claims arise from this contact.

1 visited California for occasional week long vacations. She
2 never traveled to California for business. The bulk of
3 Ritzman's contact with California occurred telephonically, when
4 she consulted with plaintiff on a weekly basis between April
5 2005 and June 2006. For the same reasons as Williams,
6 Ritzman's contacts with California are not sufficient for
7 general jurisdiction.

8 **2. Plaintiff has Established Specific Jurisdiction.**

9 In order to find specific jurisdiction: "1) the
10 nonresident defendant must have purposefully availed himself of
11 the privilege of conducting activities in the forum by some
12 affirmative act or conduct; 2) plaintiff's claim must arise out
13 of or result from the defendant's forum-related activities; and
14 3) exercise of jurisdiction must be reasonable." Roth v.
15 Marquez, 942 F.2d 617, 620-21 (9th Cir. 1985).

16 **A. Plaintiff has Shown Purposeful Availment.**

17 To prove the first element in a tort case, plaintiff must
18 show "purposeful direction," defined by the "three-part
19 'effects' test traceable to the Supreme Court's decision in
20 Calder v. Jones, 465 U.S. 783 (1984)." Schwarzenegger v. Ford
21 Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). The
22 defendant must have 1) committed an intentional act, 2)
23 expressly aimed at the forum state, which 3) causes harm that
24 the defendant knew was likely to be suffered in the forum
25 state. Id.

26 Under this test, I find that plaintiff has alleged facts
27 sufficient to establish jurisdiction. In 2000, the parties met
28 at a conference in defendants' hometown of Taos, New Mexico.

1 Shortly thereafter, plaintiff and Williams began a doctor-
2 patient relationship that lasted over six years. In 2002,
3 plaintiff moved to California and continued calling Williams on
4 a weekly basis for psychotherapy and dream analysis. On 2 or 3
5 occasions Williams came to California at plaintiff's request to
6 conduct therapy sessions. At those therapy sessions, Williams
7 provided dream analysis and psychotherapy to plaintiff and
8 others. Ritzman's contacts are not quite as numerous. Her
9 primary contact with plaintiff consisted of weekly Shamanic
10 counseling sessions over the course of fourteen months.

11 Both defendants committed intentional acts within the
12 "specialized meaning" of the Calder effects test.

13 Schwarzenegger, 374 F.3d at 806. The standard for this element
14 is very low. See Id. Both defendants intentionally spoke to
15 the plaintiff on the telephone. Williams intentionally
16 traveled to California and performed dream analysis at
17 plaintiff's request.

18 Plaintiff has also shown that defendants "expressly aimed"
19 their intentional acts at California. Id. From 2002 until
20 2006 Williams treated plaintiff while she was California at
21 least two times per week. Williams knew where the plaintiff
22 lived, and continued to accept payment for treatment. As the
23 court in Schwarzenegger wrote, "the 'express aiming' analysis
24 depends, to a significant degree, on the type of tort or other
25 wrongful conduct at issue." Id. at 807. The complaint plainly
26 states that Williams specifically directed his treatment
27 towards plaintiff, and it was the abuse of this relationship
28 that gives rise to this cause of action. The same analysis

1 applies to Ritzman's telephonic treatment of plaintiff. Both
2 defendants directed their activities towards the plaintiff in
3 California over a continuous and sustained period of time.

4 The third element of the Calder test is similarly met.
5 Williams must have known that for a four year period and for
6 over four hundred treatment sessions, that plaintiff would have
7 felt any benefit or harm in California. Ritzman too must have
8 known that if the treatment was detrimental to plaintiff, she
9 would feel the harm in California.

10 Defendants' reliance on Prince v. Urban, 49 Cal. App. 4th
11 1056 (4th Dist. 1996), and Wright v. Yackley, 459 F.2d 287 (9th
12 Cir. 1972), is misplaced. Both of those cases found personal
13 jurisdiction in the forum state lacking where the primary
14 medical care was rendered in the doctor's home state but
15 follow-up care occurred in the forum state. For example, in
16 Prince, the California plaintiff was referred to the defendant
17 Illinois doctor for treatment of her headaches. After
18 returning to California, the plaintiff had numerous phone
19 consultations with the defendant, for which she paid. The
20 defendant also mailed medications directly to the plaintiff and
21 arranged to have the plaintiff's prescriptions filled in
22 California. The court affirmed a dismissal for lack of
23 personal jurisdiction because "the doctor-patient relationship
24 was not the result of any 'systematic or continuing effort . .
25 . to provide services' to be 'felt' in California." Id. at
26 1064 quoting Wright, 459 F.2d at 290.

27 This case is distinguishable from Wright and Prince for
28 one principal reason; these defendants *did* engage in a

"systematic or continuing effort" to provide services that would be felt in California. Unlike the plaintiffs in Wright and Prince who traveled out of state for a discrete medical procedure, and received follow-up treatment in their home states, plaintiff here received her principal treatment during six years of twice weekly telephonic therapy and counseling while she was in California, for four of the years, and in Hawaii for two. The alleged malpractice occurred, in part, not because of a discrete act by a defendant, but because of a breach of a relationship plaintiff alleges was one of trust, built over many treatment sessions, presumably all of equal importance. The regularity, frequency, and quality of the contact between Williams and plaintiff sets this case apart from Wright and Prince.⁵

Williams's trips to California, specifically those where he came at plaintiff's request, further set this case apart from Wright and Prince. Unlike the defendants in Wright and Prince, Williams conducted business while physically present in the forum state. The trips to California and the treatment rendered to plaintiff during those trips, partially give rise to the plaintiff's claims and further show that Williams made a continuous and sustained effort to cause effects in the forum state.

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⁵ A number of courts in recent years have sustained jurisdiction over doctors who had systematic or continuous contacts with a forum state. See Kennedy v. Freeman, 919 F.2d 126 (10th Cir. 1990), Walsh v. Chez, 418 F. Supp. 2d 781 (W.D. Penn. 2006), Ray v. Heilman, 660 F. Supp. 122 (D. Kan. 1987).

1 **B. The Claims Arise out of the Forum Related Activities.**

2 Plaintiff claims that most of defendants' tortuous conduct
3 took place during telephone conversations, and that those
4 telephone conversations are defendants' primary contacts with
5 California. Further, the therapy that Williams provided to
6 plaintiff while in California forms part of the basis for the
7 complaint.

8 Defendants argue that plaintiff's damage claims primarily
9 stem from a fraudulent real estate transaction regarding a
10 piece of real property located in New Mexico. Plaintiff argues
11 that her loss on this transaction is just one component of the
12 damages she seeks, that defendants improperly induced her to
13 enter into this transaction, and that most of the damages she
14 suffered were a result of the alleged medical malpractice, not
15 the real estate transaction. Because I must resolve any
16 conflicts in plaintiff's favor, I find that her damage claims
17 are sufficiently related to defendants' forum related
18 activities.

19 **C. It is Reasonable for the Defendants to Defend
20 Themselves in California.**

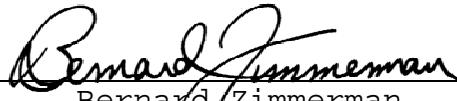
21 With respect to the burden on defendants, Williams
22 traveled to California to treat plaintiff and others and to
23 teach. It does not appear to be terribly burdensome to require
24 him to travel to California to defend himself in an action
25 partially arising out of some of those contacts.

26 Ritzman presents a closer case. Her contacts with
27 California were not nearly as numerous or continuous as
28 Williams. Nevertheless, she did treat plaintiff over the phone

1 for a period of fourteen months while plaintiff lived in
2 California. Ritzman shares the same counsel as Williams and is
3 defending against most of the same claims. On balance, it does
4 not appear to be burdensome for Ritzman to defend herself here.

5 Because I have found that plaintiff has established
6 specific jurisdiction, defendants' motion to dismiss is **DENIED**.
7 The motion to transfer venue is also **DENIED** as defendants have
8 not made a showing that New Mexico would be the more convenient
9 forum. Defendants must file an answer by **October 12, 2009**.

10 Dated: September 30, 2009

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12 Bernard Zimmerman
13 United States Magistrate Judge

14 G:\BZALL\-\BZCASES\JONES v. WILLIAMS\Order Denying Defendant's Motion to
Dismiss for Lack of Personal Jurisdiction v 3.wpd

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